

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 01-11606-RGS

ASSOCIATES FINANCIAL
SERVICES OF AMERICA, INC.

v.

DONNA S. LAWSON, Individually
and as Trustee of Lawson Family Trust,
JAMES T. LAWSON, and UNITED STATES OF AMERICA
(INTERNAL REVENUE SERVICE)

FINDINGS OF FACT AND RULINGS
OF LAW AFTER A NON-JURY TRIAL

July 19, 2004

STEARNS, D.J.

This interpleader action was brought by Citifinancial Mortgage Co., Inc., the successor to Associates Financial Services of America, Inc. (Associates Financial), to resolve the distribution of \$38,059.72 in surplus funds following a foreclosure and sale of real property at 3 Bluff Avenue in Mashpee, Massachusetts. The property was formerly owned by defendants Donna and James Lawson.¹ The real party in interest is the Internal Revenue Service (IRS), which claims a priority interest in the surplus funds by virtue of federal tax liens arising from trust fund recovery penalties imposed pursuant to 26 U.S.C. § 6672. The action, which was originally filed in Worcester Superior Court, was removed by the United States to the federal district court on September 19, 2001. On May 27, 2003, the court granted the plaintiff's motion to deposit the surplus funds into the court and

¹Shortly after the lawsuit was filed and removed to the federal district court, James Lawson disclaimed any interest in the surplus funds and was dismissed from the case.

withdraw from the action.

After a difficult course of discovery, attributable to the Lawsons' persistent refusal to abide by court rules and orders, the case was scheduled for trial on December 22, 2003. After hearing the government's opening statement, the case was continued at the request of Donna Lawson, who had appeared pro se, but indicated that she now wished to retain counsel. The trial was adjourned to January 7, 2004. However, Lawson's retained attorney failed to appear on that date.² The trial was then continued to March 5, 2004. At trial, in addition to receiving numerous exhibits, the court heard testimony from John Carroll, an IRS examiner, and from Donna Lawson. At the close of the evidence, the parties were invited to submit proposed findings of fact and rulings of law. The government did so on March 25, 2004. No post-trial pleadings were filed by Donna Lawson.

FINDINGS OF FACT

As the government's proposed findings of fact are uncontested, I will largely adopt them, modifying the proposed findings, however, where necessary to conform to the evidence presented at the trial.

1. James and Donna Lawson were married in 1972. Their first child, Carrie, was born in 1974. Donna Lawson stopped working to care for her new-born and did not resume working until the mid-1990s. Donna and James Lawson had two more children, Kaitlin, who was born in 1978, and Gregory, who was born in 1980.

2. Donna Lawson resumed work as a part-time sales person in the winter of 1994

²Donna Lawson was ordered to reimburse the United States \$1,136.58 for the travel expenses incurred by the Department of Justice attorneys who appeared on January 7, 2004, to represent the government at trial.

and 1995 at the Disney Store and then at the Gourmet Chef. Her hourly earnings were her only source of personal income. In 1997, she began working part-time as a hospital EKG technician, earning an hourly wage of approximately \$11.

3. James Lawson, at all relevant times, was the sole or primary earner for his family. His income paid for the family's living expenses, including mortgages, real estate taxes, utility bills, and maintenance costs for the various properties acquired by the Lawsons.

4. During the 1970s and 1980s, the Lawsons resided at 83 Countryside Drive in Cumberland, Rhode Island. James and Donna Lawson jointly purchased 83 Countryside Drive in 1972, as their first marital residence. In 1979, the Lawsons mortgaged 83 Countryside Drive to the Pawtucket Institution for Savings (Pawtucket) for \$73,000.

5. On November 22, 1989, South Shore Bank, a judgment creditor of James Lawson, purchased James Lawson's one-half interest in 83 Countryside Drive at an execution sale. (Ex. 3).

6. On January 12, 1990, the Lawson Family Trust was created. (Ex. 4). Donna Lawson was appointed the sole Trustee. The Lawson's daughters, Carrie and Kaitlin, were named the Trust beneficiaries.³ On the advice of the attorney who drafted the Trust instrument, James Lawson was given no formal role in the administration of the Trust. Donna Lawson, however, conceded at trial that she never exercised any duties as Trustee. The Trust, according to Donna Lawson, was created to protect her daughters from her husband's creditors.

³The Lawsons' son Gregory died in an accident at a construction site in 1989. According to Donna Lawson, \$291,000 in proceeds from the settlement of an action commenced on Gregory's behalf were paid into the Trust in 1993, although she offered no documents corroborating the payment.

7. On August 15, 1990, the Lawson Family Trust purchased the Pawtucket mortgage on 83 Countryside Drive at a foreclosure sale for \$150,000 (Ex. 5), with funds provided by James Lawson.⁴

8. In 1976, James and Donna Lawson paid \$25,900 for 3 Bluff Avenue in Mashpee, Massachusetts (Ex. 20), which they intended to use as a summer vacation home. On June 17, 1981, James Lawson transferred his one-half interest in 3 Bluff Avenue to Donna Lawson for a consideration of less than \$100. (Ex. 21). On July 12, 1990, James and Donna Lawson signed a \$100,000 promissory note to The Lenders/Massachusetts, Inc. (The Lenders), secured by a mortgage on 3 Bluff Avenue. The monthly payment on the mortgage was \$1,232.53. (Ex. 22). James Lawson made 96 monthly payments, for a total of \$118,322.88, on the promissory note and mortgage through May of 1998 before defaulting on further payments. (Ex. 25, Barnstable Complaint, para. 7). On October 30, 1991, Donna Lawson transferred the title to 3 Bluff Avenue to the Trust for a listed consideration of \$15,000. (Ex. 24). Donna Lawson and her children spent their summers at 3 Bluff Avenue. James Lawson stayed at 3 Bluff Avenue on weekends.

9. On February 16, 1990, the Lawson Family Trust acquired land at 21 Stillwater Drive in Cumberland (Ex. 8), where the Lawsons intended to build a new home. On May 4, 1990, a mortgage on the property was recorded in the amount of \$310,000 by Wainwright Savings Bank Wainwright). (Ex. 9). James Lawson was a guarantor on the loan. The

⁴The home at 83 Countryside Drive was rented by the Trust and eventually sold. Part of the proceeds of the sale were used to extinguish South Shore Bank's claim on James Lawson's one-half interest in the property and to pay other creditors. (Ex. 6).

monthly payment on the mortgage was approximately \$1,600.⁵

10. In 1986, 1990, and 1991, the IRS assessed James Lawson trust fund recovery penalties in a total amount of \$88,806.35 pursuant to 26 U.S.C. § 6672, resulting from the failure of his construction business to pay over to the United States income and social security taxes withheld from the wages of company employees. The liabilities were assessed for the following periods on the following dates:

<u>Tax Period</u>	<u>Assessment Date</u>	<u>Balance Due as of 12/7/92</u>
4th Quarter 1982	02/10/86	\$13,783.42
3rd Quarter 1984	06/23/86	18,253.15
3rd Quarter 1987	09/03/90	10,910.61
4th Quarter 1991	12/30/91	<u>45,859.17</u>
	Total	\$88,806.35

The liens in the total amount of \$88,806.35 were recorded against 3 Bluff Avenue in the Barnstable Registry of Deeds on December 7, 1992. (Ex. 1).

11. On July 22, 1996, Donna Lawson, acting in her capacity as Trustee, sold 21 Stillwater Drive to herself and her husband as tenants by the entirety for \$26,000. The Lawsons assumed personal responsibility for the payment of all outstanding mortgages. (Ex. 10). Donna Lawson cannot recall the reason for the sale, or whether the consideration of \$26,000 was ever actually paid to the Trust.⁶ The transfer took place three days before

⁵A second mortgage on the property in the amount of \$38,568.20 was granted by the Trust to Wainwright on April 1, 1994.

⁶There is no documentary record suggesting that it ever was.

James Lawson filed for bankruptcy and four days before Wainwright had scheduled a foreclosure sale of the property. Wainwright's motion to lift the automatic bankruptcy stay was granted on January 16, 1997. (Ex. 13). However, before the sale could be consummated, Donna Lawson filed for bankruptcy. (Ex. 14). The court granted Wainwright's motion to lift the automatic stay in Donna Lawson's bankruptcy on July 10, 1997. (Ex. 17). At trial, Donna Lawson conceded that she had filed for bankruptcy to avoid the foreclosure.

12. According to James Lawson's Chapter 11 filing, as of July of 1996, he was earning a monthly income of \$4,500, while Donna Lawson was earning \$400 a month at the Disney Store. (Ex. 11, Sch. I). In his Chapter 11 monthly operating reports for September 1996 and October 1996, James Lawson reported that he had given his wife \$4,500 (Ex. 33), and \$6,000, respectively (Ex. 34), for "various personal living expenses." Donna Lawson's bankruptcy filings are consistent in reporting that she relied on James Lawson to pay almost all of her personal and household expenses. (Ex. 14, Sch. I). She listed her husband's monthly net income as \$7,313, as compared to her monthly net income of \$793. In her objection (Ex. 16, pp.1-2) to Wainwright's motion to lift the automatic stay, she stated

that: [a]s a result of problems with a past construction business owned by the Debtor's spouse, James Lawson, the Debtor fell behind in her mortgages. . . . James Lawson has since secured a new position with Raygar Corporation. As a result of this new position, the Lawsons now greatly increased their income. . . This increased income has placed the Debtor in a position to maintain her monthly mortgage payments and save her home.

13. The 21 Stillwater Drive property was sold by Wainwright in a foreclosure sale held on November 13, 1997, for \$325,000 to W. B. & T. Realty Corp. of Massachusetts.

(Ex. 18).

14. On May 2, 2000 (later extended to May 12, 2000), Associates Financial, the successor to The Lenders on the 3 Bluff Avenue promissory note and mortgage, scheduled a foreclosure sale on the property. In response, on May 5, 2000, the Lawsons sought to enjoin the sale by filing a Complaint in Barnstable Superior Court. James T. Lawson et al. v. Associates Financial Services of America, Inc., Case No. 00-247. (Ex. 25). In the Complaint, the Lawsons alleged that they had made 96 payments of \$1,232.53 in satisfaction of the outstanding mortgage. After the Superior Court denied the motion for injunctive relief, Associates Financial sold the property for \$170,000 at a foreclosure sale on August 9, 2000.

15. While Donna Lawson testified that she had begun contributing to the mortgage payments on 3 Bluff Avenue in 1997, after finding part-time employment as an EKG technician, documents filed as attachments to the Barnstable Complaint establish that James Lawson was the sole source of the funds. Letters from the Lawsons' counsel to Associates Financial referenced only James Lawson in discussing the 3 Bluff Avenue mortgage payments. Examples include:

a. Ex. H to the Complaint, a letter dated March 1, 2000, states, "In addition, Mr. Lawson was told by a representative of [Associates Financial] that there is an auction scheduled for March 2, 2000 at the property, but there does not appear to have been any legal notice in local publications as to this fact. Please call my office to confirm whether there is in fact an auction scheduled at the above property, as Mr. Lawson will attend." (Emphasis added).

b. Ex. I to the Complaint, a letter dated April 18, 2000, stated, "Mr. Lawson indicates that he has made a total of 96 payments." . . . cc: James Lawson". (Emphasis added).

c. Ex. J to the Complaint, a letter dated April 25, 2000, states, "[a]s we are nearing

the date of the sale, Mr. Lawson has no alternative but to file in Superior Court for a Temporary Restraining Order to halt the sale. . . . cc: James Lawson.” (Emphasis added).

Moreover, all of the cancelled checks reflecting payments on the 3 Bluff Avenue note and mortgage that were produced by the Lawsons during discovery were signed by James Lawson individually. (Exs. 28-32).

16. The Lawson Family Trust filed income tax returns for 1992, 1993, 1997, and 1998. During those years, the Trust reported losses for 1992, 1993, and 1997. In 1997, the Trust reported income of \$1,533.

DISCUSSION AND RULINGS OF LAW

While the tale of the Lawsons’ finances is tangled, the applicable law is mercifully straightforward. Under 26 U.S.C. §§ 6321-22, a statutory lien arises in favor of the United States at the time a tax assessment is made on all property, real or personal, belonging to the taxpayer. United States v. Murray, 217 F.3d 59, 60 (1st Cir. 2000). The lien also runs to after-acquired property. Plymouth Savings Bank v. U.S. Internal Revenue Service, 187 F.3d 203, 206 (1st Cir. 1999). “[I]t was established long ago that the lien follows any property substituted for what the taxpayer owned, provided that the chain of substitution can be traced.” Municipal Trust and Savings Bank v. United States, 114 F.3d 99, 101 (7th Cir. 1997). See Sheppard v. Taylor, 30 U.S. (5 Pet.) 675, 710 (1831), quoted favorably in Phelps v. United States, 421 U.S. 330, 334-335 (1975) (“The lien reattaches to the thing and to whatever is substituted for it. . . . The owner and the lien holder, whose claims have been wrongfully displaced, may follow the proceeds wherever they can distinctly trace them.”).

Here, the liens against James Lawson arose when the assessments for unpaid employee withholding taxes were made in 1986, 1990, and 1991. As the government succinctly summarizes the evidence, the liens “can be traced to 3 Bluff Avenue because James Lawson’s encumbered [post-1986] earnings were used to pay the mortgage, the real estate taxes, the utility bills and maintenance costs.” Government’s Post-Trial Memorandum, at 11-12. As \$94,904.81 of the total payments of \$118,322.88 on the promissory note and security interest in 3 Bluff Avenue were made after the last of the four liens on his personal property arose on December 30, 1991, the United States is entitled to the entire contested \$38,059.72 surplus from the sale of 3 Bluff Avenue, and any accrued interest.⁷

ORDER

For the foregoing reasons, judgment will enter for the United States with respect to the entire surplus accrued from the sale of 3 Bluff Avenue.

SO ORDERED.

⁷In the alternative, the government argues that the Lawson Family Trust, while not necessarily a “sham,” was merely a nominee of James Lawson and therefore subject to foreclosure by the United States on its assets. See G. M. Leasing Corp. v. United States, 429 U.S. 338, 350-351 (1977). Among the indicia suggesting that the Trust is a mere nominee for James Lawson, the government points to: (1) Donna Lawson’s total unfamiliarity with the affairs of the Trust despite her ostensible role as Trustee; (2) that the entire interest in 3 Bluff Avenue was transferred first to Donna Lawson and then to the Trust for questionable consideration; (3) that James Lawson maintained the full use and control of the Trust’s assets, including the taking of legal action on its behalf; and (4) that the Trust instrument, which imposes no restrictions on the powers of the Trustee, is not a true nominee trust under Massachusetts law. See In re Grand Jury Subpoena, 973 F.2d 45, 48 (1st Cir. 1992). While the argument is a strong one, and probably a sufficient independent ground for a decision in favor of the United States, because the government’s right to the surplus under its “tracing” theory is incontestable, I need not decide the issue.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE